

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

BARBARA RASULLAH

PLAINTIFF

v.

No. 4:20-cv-1143-DPM

SMITH & NEPHEW, INC. and
JOHN DOES 1-10

DEFENDANTS

ORDER

Smith & Nephew moves to dismiss Rasulallah's amended complaint. Rasulallah hasn't pleaded notice. She has therefore failed to state warranty claims. *Hartness v. Nuckles*, 2015 Ark. 444, 6, 475 S.W.3d 558, 563 (2015). But her amended complaint bolsters the factual particulars underlying her injuries and the components' alleged propensity for allowing mycobacteria infections. This plausible allegation provides Smith & Nephew sufficient notice to defend on strict liability. Her negligence claim also survives. Whatever the record may ultimately reveal about the recall details, providing knee-replacement materials that are susceptible to infections is not exercising ordinary care, and Rasulallah has pleaded an adequate causal connection between those materials and her later problems, including her infected right knee.

Motion, Doc. 13, granted on the warranty claims, which are dismissed without prejudice, and otherwise denied.

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

5 January 2021